

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
SEPTEMBER 23, 2015**

**CALL TO
ORDER**

A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. at the Earl Bennett Building, Conference Rooms A and B, 1035 1st Ave W, Kalispell, Montana. Board members present were Marie Hickey-AuClaire, Tim Calaway, Kevin Lake, Ron Schlegel, Dean Sirucek, Jim Heim, Jeff Larsen, Mike Horn and Greg Stevens. Mark Mussman and Erik Mack represented the Flathead County Planning & Zoning Office.

There were 9 people in the audience.

**APPROVAL OF
MINUTES
6:02 pm**

There were no meeting minutes to approve.

**PUBLIC
COMMENT
(not related to
agenda items)
6:02 pm**

Hickey-AuClaire reviewed for the audience the public comment period for both agenda items had been closed.

Dave Taylor, Planning Director for the city of Whitefish, wanted to correct his comment to the board at the last meeting (9/9/15). There was a discussion on the setback off Second Creek which was part of the municipal water supply. Whitefish's water quality ordinance had a setback of 200 feet off that creek specifically. He had said 100 feet was the setback at the meeting. He knew public comment was closed but he wished to give the board a copy of the letter the mayor of Whitefish wrote to the county commissioners which talked about the 200 foot buffer.

Stevens asked Taylor to give the letter to the staff because public comment had been closed.

Taylor gave the letter to staff.

**FLATHEAD
COUNTY
ZONING TEXT
AMENDMENTS
(FZTA-15-01)
6:04 pm**

Continuation from September 9, 2015 of board discussion and consideration of a recommendation to the Flathead County Commissioners A request by the Planning and Zoning Office for text amendments to the Flathead County Zoning Regulations. The primary text amendment would create five new use district classifications to the zoning regulations. Specifically, new zoning district classifications, named B-2A Secondary Business, BMRR Big Mountain Resort Residential, BMV Big Mountain Village,

BSD Business Service District, and RR-1 Low Density Resort Residential would be incorporated into the zoning regulations as Sections 3.45, 3.46, 3.47, 3.48 and 3.49. No new physical zoning districts will be created as result of this text amendment.

The five new use district classifications will be cross referenced to other Sections of the Flathead County Zoning Regulations as part of this text amendment. These include the following text amendments to:

- Section 3.01.020 to add the five new use districts ;
- Section 3.03.020(10) to include RR-1 as a zoning or use district that prohibits gravel extraction and asphalt and concrete batch plant uses;
- Section 4.04 to include RR-1 for a caretaker's facility;
- Section 4.06 to include BSD for a commercial caretaker's facility;
- Section 4.08.040 to include RR for day care centers;
- Section 5.05.010 and 5.05.020 to include RR for greenbelt requirements;
- Section 5.11.040(3) to include BMRR, and RR-1 for signs;
- Section 5.11.040(4) to include B-2A, BMV, and BSD for signs;
- Section 6.13 to include BMV, BMRR, BSD, and RR for parking requirements special conditions.

Public comment to the Planning Board regarding this item has been closed.

**MAIN MOTION
BOARD
REVIEWED
PUBLIC
COMMENT
RECEIVED AT
THE
SEPTEMBER 9,
2015 PLANNING
BOARD
MEETING
6:06 pm**

Schlegel made a motion seconded by Horn to have a roll call tally on who had reviewed public comment received at the September 9, 2015 Planning Board meeting.

**ROLL CALL
BOARD
REVIEWED
PUBLIC
COMMENT
RECEIVED AT
THE
SEPTEMBER 9,
2015 PLANNING
BOARD
MEETING**

On a roll call tally all nine members of the Flathead County Planning Board present had read the public comment received from the September 9, 2015 Planning Board meeting.

**BOARD
DISCUSSION**

Hickey-AuClaire reviewed process.

**MAIN MOTION
TO ADOPT
F.O.F.
(FZTA-15-01)**

Larsen made a motion seconded by Stevens to adopt staff report FZTA-15-01 as findings of fact.

**BOARD
DISCUSSION**

Stevens said for the record, he reviewed all the comments plus his written notes and then went to Montana Code Annotated (MCA) because it was referenced in the comments. He went to the county's growth policy, zoning regulations, Whitefish Growth Policy and Webster's Dictionary. He did not do that to say he was a great guy just that it had been a bit of a mind stretching endeavor for him. He had gone in depth into the information. In so doing, he had identified, for him, at least three issues they could probably get through fairly quickly. One issue was Houston Drive. Another issue was the vendor, food vendor language in the text that Whitefish wanted out of the amendments. The third issue was the I-1 industrial zone. He thought they could get through those concerns fairly quickly. The other concerns might require longer work. He did not know procedurally how to address those concerns.

Larsen said they were on the text amendments to add the new definitions. They were not on the Houston Drive issue yet. The next item would be creating the zoning district itself.

Sirucek asked for a point of clarification. If the board amended the proposed draft in any way, did they have to go back to the public for additional public comment?

Larsen said they did not. They were making a recommendation to the commissioners. The board could amend the recommendation based on comment or something they did not see as right. They were an advisory board to the commissioners.

Mack said the vendor comments were in the B-2A text which would be part of the text amendments.

Larsen said comment based on vendors would need to be discussed at this time.

Mack said yes.

Stevens clarified what the board was considering in the discussion. He read part of the comment letter from the city of Whitefish which concerned vendors. He did not have a problem with either taking part of that text and changing it to food vendors or eliminating it. He read from the letter again a request to add furniture and floor covering stores. He did not have an issue with adding furniture and floor covering stores.

The board discussed other recommendations from the letter which concerned convenience stores.

Stevens read again from the letter from Whitefish which involved convenience stores as a standalone use and antique stores, auction barns and gift card retail sales. He said his feeling on the requests were their job was make the county regulations as compatible as possible with Whitefish's regulations. That was why he looked up compatible in Webster's Dictionary. Compatible meant capable of existing together in harmony. He gave the example of he and his wife were not identical twins but they had lived together for decades. They were compatible. They existed together in harmony. They were compatible, not identical. At times they had different ideas and behaviors, but there was compatibility there. He did not see where the county was incompatible on the convenience stores. The list of uses in that particular zoning district of which he named off several, he did not see where if there was a convenience store without a gas station attached was an issue for him. He had been involved since the late nineties with zoning and one of his goals was to try wherever he could to not make things any more complicated, restrictive, lengthy or hard to understand than necessary. He would have a hard time explaining to a property owner he could have a convenience store only if there was a gas station attached

to it. He thought the proposed zoning was compatible to a great degree. He did not see the point in eliminating gift and card retail sales from that county zoning district. He hated to be more restrictive on a county zone than was necessary if it was, in bulk, compatible with the city of Whitefish.

The board briefly discussed convenience stores and their relationships with gas stations.

Stevens said in his review the zoning was compatible as it was written without rewriting it. His recommendation was to change the vendor part of the amendment by eliminating vendor or changing it to food vendor and include furniture and floor covering stores as a listed, permitted uses.

Calaway asked if Stevens would add auction barns.

Stevens said they could include it. He would rather have a convenience store than an auction barn next to him.

Calaway said all the copies in the comments stated the same thing. If they were stuck in the same pile, they all read the same way.

Stevens said his thinking on B-2A was there was some residual fear on the vendor comment because the city did not have any control because it was now under county land use regulations. He did not have a big agenda to include furniture and floor covering stores. He had put an ok on that to demonstrate the board was willing to compromise with Whitefish.

Hickey-AuClaire, the board, Mussman and Mack discussed procedure to change wording in the text amendments and if the changes would make the Planning Office's job harder.

Heim, Mack and Mussman discussed if there was any extra work for staff in defining the terms in the amendments and if definitions were needed at this time.

The board and staff discussed definitions, if there was a definition for vendor, different types of vendors and the benefits of deleting the word vendor. They also discussed convenience stores and gas stations and compatibility with Whitefish's zoning.

Sirucek said the board had received a lot of public comment concerning the text amendments and how compatible they were with Whitefish's zoning district sign standards. He remembered Mack saying they were fairly compatible but not totally. He asked Mack to explain how much out of sync the standards were.

Mack said he was not familiar with Whitefish's signing regulations so he did not feel he could adequately answer the question.

Stevens said his view was the county had signage regulations. What the comments were asking was for the board to amend the county's sign regulations. He did not think they needed to amend the sign regulations. They were compatible enough. The whole goal of sign regulations was to regulate the signage and they seemed to be working ok.

Calaway said they did make them more restrictive when the board was working on the growth policy a while ago.

Stevens said if you were going to go change the sign regulations, it could turn into a real hornet's nest with a whole lot of public hearings because it affected a lot of people. He could see how Whitefish would be concerned if there were no sign regulations.

Sirucek said his perception was the county sign regulations were not extremely out of sync with what he saw in Whitefish. His thinking was this issue was one of Pandora's boxes which he did not think they wanted to open. He wanted to make sure his perception agreed with other board members' and staff's.

Calaway said he did not think they needed to change them. Quite a few years ago the board had gone through the sign regulations to make them tougher and there was a big stink about what happened to people's old sign if they looked awful and they wanted to change it but they would have to put a smaller sign in a whole different place and would cost \$10,000 to change their sign. It was a can of worms. He thought they had done a pretty good job at that point.

Sirucek said that was his perception but he wanted to check to see if there was agreement with his perception.

Larsen agreed with Calaway's comments. Working on sign ordinances was a contentious issue. The county's sign ordinance was compatible with Whitefish's. It didn't mean they were identical, they were compatible. In order to redo it, it was a big project and would affect the whole county. He felt that would be beyond the scope of what the board was trying to do with this zoning district. Compatible did not mean identical. It didn't mean they had to adopt Whitefish's zoning or regulations. The board had come a long way by adopting five new zoning regulations. They had tried to be pretty compatible. He thought the board had met Whitefish half way or more than half way. There were a lot of comments from people who did not want any Whitefish zoning districts in the county. They wanted Whitefish to leave them alone, and the board to not adopt anything. The board had tried to use a W designation and the people didn't want a W designation. He thought the county had bent over backwards in the Planning Board and Planning staff to be compatible. They were probably pushing beyond what a lot of people wanted them to be to be compatible. He had characterized and counted the comments. Fifteen of the comments were cut and pasted, just for the record, not that it was good or bad, they were cut and pasted comments exactly like the one sent in by Citizens for a Better Flathead. He reviewed what the comments stated which included the B-2A zoning, the sign ordinance and the rural 15 acre zoning district which was similar to what Taylor had suggested. Fifteen of those comments were from Citizens for a Better Flathead or people who basically copied their comments. Whitefish asked for a rural 15 acre zoning district too. He felt SAG-10 was very compatible with the 15 acre agricultural area. If the county zoning districts were looked at, the 2.5, 5 and the 10, they were very compatible zoning districts. Compatible did not mean they were exactly the same. The uses were very compatible. The county 10 acre zoning was very compatible with Whitefish's 15 acre zoning. He did not want to create more complicated and longer regulations for the people of Flathead County unless they really needed to. They were already doing a bunch of that by creating four or five new zoning districts. He had always said fewer regulations were better. In order to accommodate the Big Mountain area and some other unique areas of Whitefish, they had come a long ways in addressing the requests. He was not in favor of creating a sign ordinance or 15 acre zoning. It was not needed, and he thought they had gotten it as compatible as possible. That did not mean they were identical, that was not what the statute said. It did not say they had to be identical to Whitefish's zoning

regulations. Those were three of the comments he saw that were pretty repetitive on the zoning districts. The B-2A, the sign ordinance and the 15 acre zoning district. He read what Citizens for a Better Flathead commented concerning the B-2A zoning. Essentially that was similar to what Taylor and Whitefish had asked the board for.

Horn asked if the comments all came from within the former donut area.

The board said it did not matter.

Schlegel agreed with what Stevens and Larsen had said. He did not see the difference if a convenience store had a gas station attached. It had him a little baffled.

Stevens said as he was going through the comments, he printed off MCA concerning zoning regulations. The first criteria when doing zoning regulations was that it was in accordance with the Flathead County growth policy. It was in accordance with the Flathead County Growth Policy, not the city of Whitefish's Growth Policy. When proposing zoning regulations, they had to see if they were in accordance with the county growth policy. One of the differences between the growth policies was the county growth policy had placed an emphasis on individual private property rights in Flathead County. He read the section from the growth policy concerning private property rights. That section put a different burden on the board from Whitefish because they did not have that section in their growth policy. The board was under a different requirement when they did zoning regulations. If they were going to preserve private property rights per the growth policy, were they going to preserve the right to have a standalone convenience store? He did not see a compelling reason to take away the private property right to have a standalone convenience store. They were going to have differences as they went along because they were operating under different requirements. If the board denied a property owner the opportunity to have a standalone convenience store, they were denying private property rights.

Larsen said concerning the comments, they had received approximately 40 comments on both these items. He believed the Planning Office had sent out approximately 2,700 post cards on this proposal. That meant they had received a comment from 1.4 percent of the people which had been sent a post card. He

said they had done a pretty good job if they had received comments from 1.4 percent. The Planning Office and Planning Board had come up with a pretty good proposal. They were looking at 98.5 percent of the people who either thought it was ok or didn't bother enough to comment on it. He felt pretty good about what they had done so far.

Sirucek said he had a problem with BMRR and BMV and their riparian setbacks. He realized 20 feet was a county wide requirement, but Big Mountain was a different animal from anything else in the land. He had done more than a little digging on one side of the mountain or the other and done erosion modeling on the mountain. He could say for sure 20 feet was not sufficient to be a buffer zone in that type of soil climatic regime which was up there.

Stevens said the letter from Whitefish signed by Taylor, mentioned the setback. He read from the letter which said First, Second and Third Creeks were used as the water supply for the city. He said in his research on the issue, no one was using First Creek for the water supply and the Second and Third Creeks were being used. The information he had read in the newspaper accounts as far as Second and Third Creeks and Whitefish's water supply were concerned was 71 percent of the drainage was Forest Service and the bulk of the rest of the drainage was Stoltze land. The exception was 200 to 300 acres around Big Mountain. That was First Creek which wasn't being use for the Whitefish water supply. His thinking was the bulk of Second and Third Creek was forest service and Stoltze land. He said there was not much that could be done with Forest Service land. They were not subject to the zoning regulations. Stoltze and Whitefish were engaged in the purchase of a conservation easement to the tune of 17 million dollars. Which was why Whitefish raised their sales tax to help pay for the easement with Stoltze so they could protect the water shed. Stoltze was on record on a number of places publicly saying protection of the Whitefish watershed for municipal use was of a prime concern to them and always had been. They were very cognoscente of its importance and go to some lengths to protect it. He was sure this new easement, which was not signed, sealed and delivered yet which apparently both parties were interested in firming up, was a go. He wondered if the issue of the Whitefish water supply even needed to be addressed. It seemed to him the problem had been taken care of with the Stoltze easement.

Schlegel said First Creek was not used because of contamination off of Big Mountain. He went on to explain. Second Creek was a 50/50 percent deal. Winter Sports owned 50 percent and Stoltze owned the other 50 percent of the land going into Second Creek. Third Creek was 80 percent Forest Service, 20 percent Stoltze. The 20 percent on Stoltze was the bottom end where basically most of the purification came in. He referenced Montana State's Streamside Management Zones Best Management Practices (SMZ BMP) he had given the board when they were working on the growth policy. He explained at length the information on creeks and lakes, the necessary setbacks, what was allowed or not allowed in the setbacks and where purification occurred.

The board discussed the setbacks, who was bound by the information Schlegel presented, what happened with different slopes and the risk of one size fits all setbacks.

Larsen asked to be recognized. He said this issue came up during the subdivision regulations. He was a professional engineer and vice president of the Montana Environmental Consultants Association. They had taken a position on the one size fits all setbacks and they were opposed to that. He explained all the variables which affected water quality in deciding setbacks. He said there was a Civil Engineering News Magazine which had an article written by two PhD's concerning setbacks. He read the conclusion of the article. Setbacks depended on several things and needed site specific investigation. The one size fits all setbacks did not work because site specific information needed to be gathered. He read from the 2006 EPA manual which referred to buffer width, vegetative cover, nitrogen removal effectiveness and a review of current science and regulations. He said the study essentially said the same thing as the two PhD's article did. The setbacks depended on the soil types, vegetative buffer and slope. He reviewed how several buffers purified the water and how much of the buffers were needed. He did not like the idea of the board, without any scientific data, coming up with a one size fits all buffer. In the Flathead County Subdivision Regulations, the board had come up with the stream, riparian setbacks which involved an extensive process which had to be submitted with their subdivision application. He read part of the regulations regarding the requirements for the plan which needed to be submitted with the application. He reiterated his concern of the board coming up with a one size fits all buffer with no scientific data.

The board discussed if it was possible to have a minimum setback requirement, what data the board had looked at when working on the growth policy, the involvement of DEQ with water issues, what regulations applied to what use and the role of the growth policy in this discussion. They also discussed what was considered in the subdivision regulations, zoning regulations and lakeshore regulations as far as setbacks and other manuals which involved setbacks.

Sirucek said he had done the erosion modeling on road systems before and after on fire sites using the most up to date models which were out there. A 20 foot buffer zone would not catch sediment in any situation he had dealt with. A 50 foot setback would catch most all of the sediment in any situation. He was going to recommend that the board deal with a 50 foot setback as a minimum. It bothered him to see the 20 foot setback.

Larsen said most subdivisions had more than a 20 setback when they had done their riparian plan.

Sirucek said his concern was there were lots which were already sold. If someone came in with an old, historical lot, the fall back for the setbacks was what was in the regulations. Because pieces of the land were part of a municipal water shed, he was going to put a motion out for those two zones that they modify the 20 foot setbacks to 50 feet.

Larsen said the only thing that concerned him was the old lots where the buildable space would be taken by the setback.

The board discussed if those lots could be grandfathered, if 20 feet was used in other zones, if it was an adequate setback or was a 50 foot setback more reasonable and if Big Mountain was unique. They continued to discuss having a blanket setback and the Whitefish Lake setback.

Schlegel said they already had things in place and it needed to be left alone. He had worked on Second Creek and Third Creek. Because of Stoltze's logging practices, there was good water from Haskell Basin even though it had been logged most of the way through there. The SMZs work.

The board briefly discussed the cost of a new well for the city and about the concern of small lots which were already established concerning setbacks.

Larsen talked about a bill which would essentially kill old lots with setbacks and how it was changed. He worried about consequences of setbacks.

Larsen and Sirucek discussed what subdivision review did for new subdivisions concerning riparian plans.

Schlegel agreed 20 feet setbacks on lakes were not enough. He thought new lots on lakes should have 50 foot setbacks.

The board and Taylor discussed what setbacks Whitefish had on lakes, what they had used for their regulations and what their requirements were for permits.

Heim said they needed to look at finding #10.

The board discussed procedure.

The board discussed Whitefish's letter concerning some issues with the zones and the findings.

**ASK THE
QUESTION**

Sirucek asked the question.

**ROLL CALL
VOTE TO
ADOPT F.O.F.
(FZTA-15-01)**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
TO
RECOMMEND
APPROVAL OF
(FZTA-15-01)**

Larsen made a motion seconded by Stevens to adopt Staff Report and recommend approval of FZTA-15-01 to the Board of County Commissioners.

**BOARD
DISCUSSION**

The board briefly discussed procedure.

**SECONDARY
MOTION TO**
*(Add Auction
barn to #1 on the
list of permitted
uses within B-2A)*

Stevens made a motion seconded by Larsen to add Auction barn to #1 on the list of permitted uses within B-2A.

**BOARD
DISCUSSION**

None.

**ASK THE
QUESTION**

Calaway asked the question.

**ROLL CALL
VOTE TO**
*(Add Auction
barn to #1 on the
list of permitted
uses within B-2A)*

On a roll call vote the motion passed 8-1 with Heim dissenting.

**SECONDARY
MOTION TO**
*(Eliminate
Vendor from the
list of B-2A
permitted uses)*

Stevens made a motion seconded by Larsen to eliminate Vendor from the list of B-2A permitted uses.

**BOARD
DISCUSSION**

None.

**ASK THE
QUESTION**

Horn asked the question.

**ROLL CALL
VOTE TO**
*(Eliminate
Vendor from the
list of B-2A
permitted uses)*

On a roll call vote the motion passed unanimously.

**SECONDARY
MOTION TO**
*(Add Furniture
and floor
covering store to
the list of B-2A
permitted uses)*

Stevens made a motion seconded by Larsen to add furniture and floor covering store to the list of B-2A permitted uses.

**BOARD
DISCUSSION**

None.

**ASK THE
QUESTION**

Sirucek asked the question.

**ROLL CALL
VOTE TO
*(Add Furniture
and floor
covering store to
the list of B-2A
permitted uses)***

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

The board and Mack clarified procedure.

**ASK THE
QUESTION**

Calaway asked the question.

**ROLL CALL TO
RECOMMEND
APPROVAL OF
*(FZTA-15-01)***

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Hickey-AuClaire reviewed the process the application would follow from this point on.

The board took a five minute break.

**RURAL
WHITEFISH
ZONING
DISTRICT
(FZD- 15-01)
7:32 pm**

Continuation from September 9, 2015 of board discussion and consideration of a recommendation to the Flathead County Commissioners regarding A Zoning request to establish the Rural Whitefish Zoning District, a request by the Planning and Zoning Office. The area is currently zoned under the Rural Whitefish Interim Zoning District and the proposal would establish B-2A (Secondary Business), BMRR (Big Mountain Resort Residential), BMV (Big Mountain Village), BSD (Business Service District), I-2 (Heavy Industrial), RR-1 (Low Density Resort Residential), R-1 (Suburban Residential), R-2 (One-Family Limited Residential), R-2.5 (Rural Residential), R-3 (One Family Residential), R-4 (Two-Family Residential), SAG-10 (Suburban Agricultural), and SAG-5 (Suburban Agricultural) zoning. The proposal would encompass approximately 12,740 acres.

Public comment to the Planning Board regarding this item has been closed.

**BOARD
DISCUSSION**

Hickey-AuClaire reviewed the process the application had followed to this point.

**MAIN MOTION
BOARD
REVIEWED
PUBLIC
COMMENT**

Schlegel made a motion seconded by Horn to have a roll call vote on who had reviewed public comment received at the September 9, 2015 Planning Board meeting.

**ROLL CALL
VOTE
REVIEWED
PUBLIC
COMMENT**

On a roll call vote all members had reviewed the public comment received at the September 9, 2015 Planning Board meeting.

**BOARD
DISCUSSION**

Hickey-AuClaire reviewed process.

**MAIN MOTION
TO ADOPT
F.O.F.
(FZD-15-01)**

Schlegel made a motion seconded by Sirucek to adopt staff report FZD-15-01

**BOARD
DISCUSSION**

The board reviewed process.

**ASK THE
QUESTION**

Larsen asked the question.

**ROLL CALL
VOTE TO
ADOPT F.O.F.
(FZD- 15-01)**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
TO
RECOMMEND
APPROVAL OF
CONDITIONS**

Larsen made a motion seconded by Sirucek to adopt Staff Report FZD-15-01 and recommend approval to the Board of County Commissioners.

BOARD DISCUSSION

Larsen said he had read all the comments. They had received ten comments on Houston Drive and three comments on the subdivision extension process which did not have anything to do with the application. He wanted to acknowledge they had seen the comments but could not do anything about them at this time. He reviewed a petition which the board had received concerning the zoning on Houston Drive and said the reason the board had looked at Houston Drive was because of comments they had received at a workshop in November, 2014 concerning the want to have the zoning consistent in the area. The feedback from the neighborhood looked like they were not in favor of the change and wanted to leave it the way it was currently. There were 15 comments which he mentioned earlier which were basically very repetitive with quite a few issues which the board had talked about earlier. He reviewed the issues raised and his thoughts on them. Permanent zoning was different than interim zoning, and he reviewed the process the board had followed from interim to permanent zoning. The board had changed the B-2A zoning wording in the first item so he did not think they needed to talk about it now. The concern about allowing more commercial zoning along Highway 93 was not valid since the board was not doing that with these items. The people who were proposing to allow commercial zoning were proposing a corridor study on the area. The board would be discussing the issue of creating more lots along Karrow Avenue and Houston Drive in board discussion. Concerning the adoption of a 15 acre zone to match the Whitefish 15 acre zoning, the county already had SAG-10, AG-20 and he was not in favor of having more zoning districts. He thought the SAG-10 zone was very compatible with the 15 acre Whitefish zone. Concerning the setbacks for water quality, he would not go into the studies he had looked at over the years and he felt the one size fits all solution was not the solution. They had addressed this issue during the first item hearing. Concerning the sign standards, they believed their sign standards were compatible with Whitefish. Doing a new sign ordinance would be a difficult process which would take a lot of time and would be out of scope with what they were doing currently. The retention of Planned Unit Developments and the waiver of annexation, he thought the board had taken care of. Concerning the proposed county interim zoning I-2 heavy industrial, he felt the board should have a discussion about that issue. He thought Whitefish was working on a plan in the railroad corridor. He wanted to see what they came up with before they would consider changing their industrial zoning. A couple of other comments which came up in discussion which

needed consideration were a little split zoning on a person's property and Don Kaltschmidt's request for cohesive zoning on his property. He might have some more comments later. He wanted to talk about septic systems as well. Dick Solner had commented septic systems were a terrible thing, caused all sorts of pollution and people needed to be on city services. He held up an article named Waterways which was in the 2006 Daily InterLake. He read parts of an article from Dr. Jack Stanford who had run the Flathead Lake Biological Station. A summary was individual septic systems were not the cause of the lake's pollution level. He read part of an EPA study. A summary was, decentralized systems were high quality solutions which were better than central systems. He said there were pros and cons of septic systems and pros and cons of centralized sewer systems. Centralized sewer systems leaked, especially old ones. He talked about another article which talked about overflows of centralized sewer systems. An overflow in a septic system was a small thing. An overflow in a centralized sewer system was a big problem. He gave the example of a problem in Missoula's system years ago with the Clark Fork River. It was not as simple as saying everyone on a sewer system was good and septic systems were bad. He went on to explain the improvements in septic systems.

Stevens wanted to make an addition to Larsen's comment. It was not just an overflow problem. Older municipal pipes leaked. He thought there had been studies done on how much raw sewage leaked in these systems before it even reached the treatment plan. If people looked at how much the systems leaked, they might want to put everyone on an individual system. It could be a real infrastructure problem in the future.

Calaway said he felt they had addressed the public comments they had received.

The board and Mack discussed what would need to be done on the split zoning issues which had been brought up in the comment period.

**SECONDARY
MOTION TO
(Zone property at
3122x14-WLH-1
and 3122x14-
WLH-2 all R-1)**

Larsen made a motion seconded by Calaway and Sirucek to zone property at 3122x14-WLH-1 and 3122x14-WLH-2 all R-1.

**BOARD
DISCUSSION**

None.

**ASK THE
QUESTION**

Calaway asked the question.

**ROLL CALL
VOTE TO
(Zone property at
3122x14-WLH-1
and 3122x14-
WLH-2 all R-1)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

The board discussed process.

**SECONDARY
MOTION TO
(Leave Houston
Point as is under
Interim Zoning)**

Calaway made a motion seconded by Larsen to leave zoning on Houston Point as is under the interim zoning with R-1 and R-2.

**BOARD
DISCUSSION**

Stevens wanted to apologize for the mix up. They had received public testimony with the question of why was one side of the road zoned one way and the other side zoned differently. He understood subdivision and knew the zoning did not control. The zoning did not have the hammer, it was the sanitation regulations. If you couldn't satisfy the sanitation regulations, you couldn't do it. He knew they could not split those lots and still satisfy the sanitation regulations. It was a moot point to him, but to the folks who live out there, it was not a moot point because they did not have the same reliance on the sanitation regulations he did. They were understandably concerned.

Schlegel said there was comment on the issue so that was why it was brought up. He did not argue with the petition concerning how many people wanted zoning changed in the area. If someone came back and had an issue, he would have a sour taste in his mouth. He did not think that would happen. He was in agreement with Stevens.

Sirucek said the one point was BJ Grieve, planner with the Planning Office, had said typically R-1 was not served with city services and R-2 was. He asked if there would be a change to the plots which were smaller than the lots the zoning called for.

The board said there would be no change.

The board discussed what affected lots smaller than the zoning allowed.

**ASK THE
QUESTION**

Calaway asked the question

**MAIN MOTION
TO
(Leave Houston
Point as is under
Interim Zoning)**

The motion passed unanimously.

**BOARD
DISCUSSION**

The board discussed smaller lots than what zoning allowed and larger lots than what the zone allowed, how grandfathering worked, what requirements they were under and what people could do concerning the size of the lots.

Hickey-AuClaire addressed a member of the public's concern about an undeveloped subdivision and what requirements development on the lots would need to follow.

Nathan Basford, 235 Lake Park Lane, explained a subdivision approved in 1949 with four acre parcels. He was concerned with the former county gravel pit which had 26 lots right next to his house. The owner of the lots of the same subdivision he had bought his lots from took his lots and did a revision in the 1990's to combine three parcels into one lot. All of those lots adjacent to the county gravel pit were a little less than a half-acre. His concern was with R-4 zoning, duplexes were allowed and whatever zoning the county made when the property was incorporated into Whitefish in the future, would create the density which would occur there. Right now there were only three people on the street. He could not imagine 26 people on the street. It was not the historical density even though it was a platted subdivision. He was concerned because in that specific area, the density should be R-1 as opposed to R-4. The density was not historic for the area even though there was a platted subdivision and its former use was a county gravel pit even though it was 26 lots.

Hickey-AuClaire asked the board how to address this issue as to

where he could voice his concerns.

Larsen said public comment was closed for this hearing.

Stevens said the board could not take action on that issue even if they wanted to because the public hearing was closed.

Larsen said he should talk to the Planning Office about this issue.

Mack said Basford had talked to BJ Grieve earlier and he said they had explained to him that it was very unlikely duplexes would be built on the property because of the size of the lots which existed. They would be under the minimum lot size for a duplex lot in R-4 because there needed to be 75,000 square feet to build a duplex in the R-4 zoning. He thought the lots were 40,000 square feet so a duplex would be unable to be built on them.

Hickey-AuClaire said it was more like a trailer park.

Basford said his concern was that was what the property would become and that was not what the street currently was.

Hickey-AuClaire said they were unable to do anything at this meeting but she wanted to give him a direction to go which was to the county commissioners.

Heim said to belabor a point. It was already a platted subdivision, owned by someone else, so the zoning was just stating what was currently in existence.

The board discussed what would happen when it was annexed into Whitefish.

Basford said he preferred the property be made R-3 so there was only single family houses allowed there.

Calaway said that was up to the owner of the property. He asked if Basford had sewer access down his street.

Basford said not yet but he thought it was coming.

Calaway said it would again, be up to the owner of the property.

The board and Mack briefly discussed the Highway 93 corridor and the request for a corridor study. They also discussed Kaltschmidt's request for different zoning and if he was asking for something different to interim zoning. They looked at the zoning around the subject property and if he would need to annex because he would not be able to get the density he desired without getting sewer services from Whitefish. It was decided not to change the zoning on that parcel.

The board discussed developing a zoning district compatible to Whitefish's 15 acre zoning district.

Stevens said a SAG-10 parcel of land was compatible with the 15 acres. The uses were pretty much similar. The board needed to provide compatibility; they did not need to be twins. He did not see the argument for incompatibility when they had the same uses. When they did the zoning regulations, the first criteria were that they be made in accordance with the county growth policy. The county growth policy was different from Whitefish's in that they had an individual property rights section. It seemed to him private property owner's rights were protected better under the county growth policy by the SAG-10 zoning than by the 15 acre zoning. If someone had a 20 acre parcel, which there was an example of on Karrow Avenue where the neighbors had 5 or 2 or 3 acre parcel, he could not make two 10 acre parcels out of his property. SAG-10 allowed a little more flexibility for the rights of the property owner but it did not take away anything from the compatibility. The permitted uses were pretty compatible. He did not see a compelling reason to restrict the property rights of an individual when the uses were the same between the two zones. Just because the zoning was changed to a SAG-10 did not mean everyone was going to split their property down to 10 acres. He thought they were compatible. In trying to keep the regulations as simple and as short as possible so that people could readily understand them, they could readily be administered, so there aren't a whole mishmash of categories all over, he hated to go down the road in making these in between zonings.

Calaway said that opened the door to making other in between zonings.

Larsen read MCA 76.2.203 concerning zoning regulations. The regulations must be made in accordance with the growth policy. The part concerning the city, the county commissioners shall

consider the compatibility issues. He read the wording from MCA.

Stevens said that anticipated precisely the fact that they were not going to be identical.

The board discussed the different wording and leaving the SAG zoning the same across the county.

Mack and the board discussed the retention of Planned Unit Developments, the Big Mountain Sewer Agreement and if they dealt with subdivision extensions.

The board discussed riparian setbacks briefly due to previous discussion on the topic earlier in the meeting. Site analysis needed to be done.

Stevens had issue with the Fish, Wildlife and Parks (FWP) setbacks and felt the board needed to do the work for themselves.

The board discussed the FWP setbacks concerning water quality and riparian vegetation and the board's desire for site specific information.

Stevens said at this point he could not support putting any large, blanket setbacks on anybody's property.

Calaway said every subdivision was asked for government agency inputs. FWP commented on every one of the applications with the same comment. If they wanted to take a look at the specific site and comment on legitimate specifics they could do that. It was not up to the board to do that.

Stevens said if they could appear before the board to give testimony, rather than sending a form letter, that would be better.

Horn said FWP had input on subdivision review.

Calaway said they had input on every single subdivision.

Stevens said the board was interested in doing what Whitefish wanted done on the Burlington Northern property and asked Taylor to talk about the comment concerning heavy industrial

zoning. He thought Whitefish was developing a neighborhood plan for the area.

Taylor said they had done a corridor plan for Highway 93 West which included the Idaho Timber parcel and Veterans Peace Park. They did not look at the Burlington Northern Santa Fe (BNSF) property because it was outside of city limits. Most of the property was currently zoned Whitefish Industrial and Warehousing district.

The board and Taylor discussed the inability of Whitefish to annex the railroad property, what property the city was looking at for neighborhood plans, the use of the property owned by BNSF, if there was a conflict between the two zones and what the city was looking at for transitional zoning.

Stevens said BNSF were what they were.

The board discussed if there was a compelling need to do anything different.

Larsen said the comment concerning a sewer agreement was too complicated to put into zoning.

The board briefly discussed the complexity of the comment. They also discussed comment on Karrow Avenue concerning waivers of annexation and where the property was located.

Stevens talked about who owned which parcels, the rural character of the area and if it was agricultural or rural residential. He had talked to Mr. Luke who owned the parcels which were designated agricultural and he had no intention of subdividing the property. Luke did not like the idea that he was treated differently than his neighbors. It was not an equitable situation. When he looked at the uses, they were compatible across the designations. Not only were they compatible, it seemed to be keeping with the character of the area because it was similar to what a lot of the other property was zoned. If the Nelson's, who lived in the area on a smaller parcel, had made the comment desiring the retention of a rural, quiet feeling, then why couldn't that rural, quiet feeling be the same on Luke's property as it was on Nelson's which was fewer acres. What was so different between the two? He had not been able to come up with the difference, particularly because the Whitefish Growth Policy designated that area where the Nelson's were as rural

residential even though it was out of what the board was talking about concerning boundary lines so they were not affected. Their testimony was given in relation to what the board was doing but they were not affected by it. Given the fact the Whitefish Growth Policy called for rural residential above and below Luke's property, he thought they were making things more consistent by going with the zone change.

Schlegel and Stevens discussed the zoning around Luke's property.

Stevens said in line with their mandate that zoning be in compliance with the growth policy and the mandate was different than Whitefish's, it looked like to him they were not doing a very good job unless they did approve their proposed zoning. They were not doing a very good job in holding up the first criteria per MCA if they did not approve the proposed zoning.

Schlegel agreed.

Stevens said he was in favor of approving the proposed zoning.

Larsen said he had pulled up R-2.5, SAG-5 and SAG-10 zoning districts and they were very compatible with each other. He compared all the uses as he read them off and compared compatibility. SAG-10 allowed some uses which people may not want around them such as dairy processing, bottling and distribution which were not allowed in the R-2.5 and SAG-5 zoning districts. All the uses in the rural residential and SAG-10 and SAG-5, they were very compatible. He agreed with what Stevens had said concerning zoning on Luke's property. He was comfortable with what was proposed. He also said there were very few comments on the proposal for Karrow Avenue. There were two comments received. They were opposed to the proposal. That was very small opposition to what the board proposed. He thought that showed the board had done a pretty good job in the area. They also had comments the other way as well. They had to look at the compatibility issue and what made sense in the area. He was happy with what they had done.

Stevens wanted to add one other thing. He read from the growth policy notation on every page which stated the growth policy was not a regulatory document and did not confer any authority to regulate that was not otherwise specifically authorized. That was something the board had gone around and around on because

the courts did not see that part sometimes. He was not so sure that people in other jurisdictions viewed their growth policy the same way. A lot of people saw the growth policy and figured that was a regulatory document, it had to be that way. It was not a regulatory document, it was a guideline. He had seen many instances where the color on the map might match the zoning because the property had undergone a change. The map was not meant to be lot specific in its categories. They were general categories where one use abuts another and sometimes there was an overlap on the thing. So, the growth policy could not be used as a hard and fast tool when they were doing zoning according to MCA 76.1.605. He did not feel bound. He would take into consideration Whitefish's Growth Policy and Flathead County's growth policy. He did look up both and took them into consideration. He also looked at the property rights section and he thought what they needed to do, they had done.

Sirucek thought the only other public comment which tied into the Karrow area had come from abutting land on Lost Coon Lake where they were going from a SAG designation to an R-2.5. There were quite a few comments regarding density on lost Coon Lake. Those were parcels that were 10 acres or less.

Mack confirmed they were less than 10 acres.

Sirucek did not see much of a conflict either. Just because it was going to be zoned to a 2.5 acre minimum did not mean they had to go in and subdivide those lots.

Larsen said there were some comments which cited the Whitefish Growth Policy. The board considered that but as far as the county adopting zoning, that was not specifically written in any part about the cities or towns close by that they had to comply with their growth policies. It didn't even mention the cities growth policies. It did mention the counties growth policy. He wanted to make that clear. Not that the board shouldn't consider it, but there was no mention in how the county adopted zoning.

Schlegel said he would go back to November, 2014 when they had a workshop at the fairgrounds. He had notes. Three different people had talked about Karrow Avenue in favor of Mr. Luke and there was one comment against Mr. Luke. He thought that was the way the views had gone in their meetings concerning Karrow Avenue. He agreed with Stevens. It was only

fair to Mr. Luke that everything else around him, pretty much, was already smaller and it was not fair to Luke to not be able to bust up his land any smaller if he wished. He did not think that was right. He did not think that was equitable.

**ASK THE
QUESTION**

Sirucek asked the question.

**ROLL CALL TO
RECOMMEND
APPROVAL OF
(FZD-15-01)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION
8:57 pm**

Hickey-AuClaire reviewed process the application would follow from this point on.

**OLD BUSINESS
8:57 pm**

None.

**NEW BUSINESS
8:57 pm**

None.

**ADJOURNMENT
8:57 pm**

The meeting was adjourned at approximately 8:57 pm. on a motion by Schlegel. The next meeting will be held at 6:00 p.m. on October 14, 2015.

Marie Hickey-AuClaire, Chairman

Donna Valade, Recording Secretary

*APPROVED AS SUBMITTED/***CORRECTED:** 11 / 18 / 15